American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

New York Spine Specialists (Applicant)	AAA Case No.	17-18-1097-6962
	Applicant's File No.	2122528
- and -	Insurer's Claim File No.	010683-117485-AN-01
	NAIC No.	24147
Old Republic Insurance Co. (Respondent)		

ARBITRATION AWARD

I, Kenneth Rybacki, the undersigned arbitrator, designated by the American Arbitration Association pursuant to the Rules for New York State No-Fault Arbitration, adopted pursuant to regulations promulgated by the Superintendent of Insurance, having been duly sworn, and having heard the proofs and allegations of the parties make the following **AWARD:**

Injured Person(s) hereinafter referred to as: Assignor

1. Hearing(s) held on 10/01/2019
   Declared closed by the arbitrator on 10/01/2019

   Ryan Berry, Esq. from Israel, Israel & Purdy, LLP (Great Neck) participated in person for the Applicant

   A representative from Gallagher Bassett Services, Inc. participated by written submission for the Respondent

2. The amount claimed in the Arbitration Request, **$ 329.92**, was NOT AMENDED at the oral hearing.
   Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

   The medical necessity of continuing treatment of a then thirty-seven-year-old male following respondent's medical examination one year after the subject accident.

4. Findings, Conclusions, and Basis Therefor

   This matter was decided on the submissions of the parties as maintained by the American Arbitration Association ("AAA") in its ADR Center and oral argument.

Respondent failed appear at the hearing which was conducted following confirmation by the AAA that notice of the hearing had been made. No submissions following the close of the record on 7/27/18 were admitted, 11 NYCRR 65-4.2 (b); Matter of Mercury Casualty Co. v. Healthmakers Medical Group, P.C., 67 A.D.3d 1017, 888 N.Y.S.2d 762 (2d Dept. 2009). Arbitration procedure contained in the No-Fault regulations, specifically, 11 N.Y.C.R.R. 65-4.2 (b)(3)(iii), provides

(iii) The written record shall be closed upon receipt of the respondent's submission or the expiration of the period for receipt of the respondent's submission. Documents submitted by either party after the record is closed shall be marked "Late."

This action for the payment of health services claims for physical evaluations performed on 3/27/18 and 4/17/18, arises from a motor vehicle accident that occurred on 12/15/16. Respondent denied the claims based on the recommendations of its examining expert, Dr. Philip D'Ambrosio. I am therefore presented with a question of fact as to whether continuing treatment of the assignor was medically necessary following the expert's examination on 12/20/17.

It is well-settled that submission of a provider's claim form to the carrier is prima facie evidence of the necessity of the services contained therein, Viviane Etienne Med. Care, P.C. v. Country-Wide Ins. Co., 25 N.Y.3d 498; Amaze Medical Supply Inc. v. Eagle Ins. Co., 2 Misc.3d 128(A), 784 N.Y.S.2d 918. An insurer's a prima facie case rebutting the presumption of necessity attaching to a claim form is demonstrated through the submission of the insurer's expert's report setting forth a factual basis and medical rationale for the conclusion that its insured's injuries were resolved as of the date of the expert's physical examination, see, e.g., Utica Acupuncture, P.C. v. Interboro Ins. Co., 39 Misc.3d 139(A).

Respondent submits the report of its examining expert to the record. That report documents a quantitative assessment of the ranges of motion of the assignor's cervical and lumbar spines, and left knee. However, the expert failed to indicate that any ranges documented on examination were normal although the expert did note that left knee motion was "full." Provocative orthopedic testing of the neck, back and left knee, and neurological testing of the bilateral upper extremities and bilateral lower extremities, was documented to be normal. The expert concluded that the assignor's injuries were resolved as of the date of the examination and therfore no further treatment of the assignor was warranted.

The record contains a report from Garuda Medical in connection with an examination of the assignor that occurred on 12/14/17. That report documented the assignor's complaints of neck, back and left knee pain. Decreased ranges of motion were quantified on examination of the cervical and lumbar spines. Tenderness and trigger points were elicited from palpation of the cervical and lumbar spines. Foraminal compression and Straight Leg Raising tests were documented to be positive. Continued physical therapy was recommend with follow-up.

Applicant saw the assignor in follow-up consultation on 2/24/18. Cervical and lumbar restrictions in serval planes of motion were documented at this time as well as decreased

sensation in the bilateral C5 and C6 dermatomes, left L4 dermatome, and decreased motor strength in several left lower extremity muscle groups. An epidural steroid injection was recommended, which the assignor received on 3/5/18, as well as continuing physical therapy. Similar findings were documented in reports of 3/27/18 and 4/17/18 with the recommendation of continuing pain management. I find from the proffered evidence that applicant rebutted any showing the respondent's expert may have made that further treatment of the assignor was not warranted and maintained applicant's continuing burden of persuasion in this regard. Proof of continuing sequelae was documented as well as opinion evidence indicating the need for continuing treatment based on the findings of examinations both proximate and subsequent to the respondent's physical examination.

Applicant is awarded $329.92.

5. Optional imposition of administrative costs on Applicant.
   Applicable for arbitration requests filed on and after March 1, 2002.

   I do NOT impose the administrative costs of arbitration to the applicant, in the amount established for the current calendar year by the Designated Organization.

6. **I find as follows with regard to the policy issues before me:**
   - ☐ The policy was not in force on the date of the accident
   - ☐ The applicant was excluded under policy conditions or exclusions
   - ☐ The applicant violated policy conditions, resulting in exclusion from coverage
   - ☐ The applicant was not an "eligible injured person"
   - ☐ The conditions for MVAIC eligibility were not met
   - ☐ The injured person was not a "qualified person" (under the MVAIC)
   - ☐ The applicant's injuries didn't arise out of the "use or operation" of a motor vehicle
   - ☐ The respondent is not subject to the jurisdiction of the New York No-Fault arbitration forum

Accordingly, the applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Total	Status
	New York Spine Specialists LLP	**03/27/18 - 03/27/18**	**$236.94**	**$ 329.92**	**Awarded: $236.94**
	New York Spine Specialists LLP	**04/17/18 - 04/17/18**	**$92.98**	**$ 329.92**	**Awarded: $92.98**
Total			**$329.92**	**Awarded: $329.92**	

B. The insurer shall also compute and pay the applicant interest set forth below. 06/14/2018 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Statutory interest shall run from the date of filing, 6/14/18 to the date of payment by the respondent.

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

Attorney fees are awarded at 20% of the amount of first-party benefits awarded in the aggregate, plus interest, in accordance with 11 NYCRR 65-4.6.

D. The respondent shall also pay the applicant forty dollars ($40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of New York
SS :
County of Suffolk

I, Kenneth Rybacki, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

10/04/2019
(Dated)

Kenneth Rybacki

IMPORTANT NOTICE

This award is payable within 30 calendar days of the date of transmittal of award to parties.

This award is final and binding unless modified or vacated by a master arbitrator. Insurance Department Regulation No. 68 (11 NYCRR 65-4.10) contains time limits and grounds upon which this award may be appealed to a master arbitrator. An appeal to a master arbitrator must be made within 21 days after the mailing of this award. All insurers have copies of the regulation. Applicants may obtain a copy from the Insurance Department.

ELECTRONIC SIGNATURE

Document Name: Final Award Form
Unique Modria Document ID:
fd06d583a4fb2cf4f79850c8984f8169

Electronically Signed

Your name: Kenneth Rybacki
Signed on: 10/04/2019